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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

C 6 - 519

United States District Court	District <u>OF DELAWARE</u>
Name (under which you were convicted): <u>DEVEAR L. BACON</u>	Docket or Case No.: <u>0006017660</u>
Place of Confinement: <u>S.C.C. (Smyrna, Del.)</u>	Prisoner No.: <u>221242</u>
Petitioner (include the name under which you were convicted) <u>DEVEAR L. BACON</u>	Respondent (authorized person having custody of petitioner) <u>WARDEN CARROLL</u>
The Attorney General of the State of <u>DELAWARE</u>	FILED <u>AUG 22 2006</u> U.S. DISTRICT COURT DISTRICT OF DELAWARE
PETITION	

1. (a) Name and location of court that entered the judgment of conviction Supreme Court of Delaware

Supreme Court of Delaware

(b) Criminal docket or case number (if you know): 453, 2005 #ID 0006017660

2. (a) Date of the judgment of conviction (if you know): JUNE 19, 2001

(b) Date of sentencing: JULY 20, 2001

3. Length of sentence: 38 YEARS

4. In this case, were you convicted on more than one count or of more than one crime? Yes No

5. Identify all crimes of which you were convicted and sentenced in this case: Robbery 1st (5 counts); PFDCF (2 counts); CAR JACK 1st (1 count); P&WBPP (2 counts); Aggr. MENACING (2 counts); Disguise (2 counts).

6. (a) What was your plea? (Check one)

(1) Not guilty

(3) Nolo contendere (no contest)

(2) Guilty

(4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court: SUPREME Court of Delaware

(b) Docket or case number (if you know): 369, 2001

(c) Result: AFFIRMED

(d) Date of result (if you know): July 1, 2002

(e) Citation to the case (if you know): BACON V. STATE, 801 A.2d 10 (Del 2002)

(f) Grounds raised: Amendment without Grand Jury Approval

(g) Did you seek further review by a higher state court? Yes No

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: SUPERIOR COURT Rule 61 Post-Conviction(2) Docket or case number (if you know): 0006017660(3) Date of filing (if you know): Sep. 17, 2004(4) Nature of the proceeding: Post-Conviction(5) Grounds raised: (1) Prejudicial Joinder 3 counts P&WPP;

(2) Prejudicial Joinder of Charges Committed At Four Separate And Distinct Times And Location ; (3) Failure To Object to Introduction of Prior Bad Acts or Request A Hearing; (4) In-Court Identification of Defendant by State Witness Violated Defendant's Right To A Fair Trial; (5) Failure To Raise The Amendment To Defendant's Indictment; (6) Prosecutorial Misconduct; Ineffective Assistance of Counsel for Failure to Identify and Raise This Discovery Violation CONCERNING Videotape.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No (7) Result: DENIED Opinion(8) Date of result (if you know): Submitted July 27, 2005; Decided Aug. 29, 2005

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: SUPREME COURT OF DELAWARE(2) Docket or case number (if you know): 453, 2005(3) Date of filing (if you know): JANUARY 17, 2006(4) Nature of the proceeding: Post-Conviction(5) Grounds raised: Same As 11(a)(5) Above

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No

(7) Result: Affirmed

(8) Date of result (if you know): JUNE 21, 2006

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes No

(2) Second petition: Yes No

(3) Third petition: Yes No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Pre-judicial Joinder 3 Counts PSWPP

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE MEMORANDUM PAGES 16-56

(b) If you did not exhaust your state remedies on Ground One, explain why: S

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Post-Conviction

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-Conviction

Name and location of the court where the motion or petition was filed: DELAWARE Superior Court

Docket or case number (if you know): 0006017660 (2002 WL 1472287)Date of the court's decision: August 29, 2005Result (attach a copy of the court's opinion or order, if available): See Appendix C,
Exhibit #7-14

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: DELAWARE SUPREME
CourtDocket or case number (if you know): 453, 2005Date of the court's decision: JUNE 21, 2006Result (attach a copy of the court's opinion or order, if available): See Appendix D,
Exhibit #19

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO: Prejudicial Joinder of Charges Committed At
Four Separate And Distinct Times And Locations.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE MEMORANDUM PAGES 16-67

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: post-Conviction

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: post-Conviction

Name and location of the court where the motion or petition was filed: DELAWARE Supreme Court

Docket or case number (if you know): 0006017660 (2002 WL 1472287)

Date of the court's decision: August 29, 2005

Result (attach a copy of the court's opinion or order, if available): Appendix C, Exhibit # 7-14

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: DELAWARE Supreme Court

Docket or case number (if you know): 453, 2005Date of the court's decision: JUNE 21, 2006Result (attach a copy of the court's opinion or order, if available): Appendix 8, Exhibit # 19(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

_____(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

_____GROUND THREE: Failure To Object To Introduction of Prior Bad Acts or Request A HEARING -(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
SEE MEMORANDUM PAGES 16 - 74

_____(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No (2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post - Conviction

Name and location of the court where the motion or petition was filed: DELAWARE Superior Court

Docket or case number (if you know): 0006017660 (2002 WL 1472287)

Date of the court's decision: August 29, 2005

Result (attach a copy of the court's opinion or order, if available): Appendix C, Exhibit # 7-14

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: DELAWARE Supreme Court

Docket or case number (if you know): 453, 2005

Date of the court's decision: JUNE 21, 2006

Result (attach a copy of the court's opinion or order, if available): Appendix A, Exhibit # 19

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR In-Court Identification of Defendant by State Witness Violated Defendant's Right To A FAIR TRIAL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE MEMORANDUM PAGES 16-80

(b) If you did not exhaust your state remedies on Ground One, explain why:

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: post - Conviction

Name and location of the court where the motion or petition was filed: DELAWARE Superior Court

Docket or case number (if you know): 0006017660 (2002 WL 1472287)Date of the court's decision: August 29, 2005Result (attach a copy of the court's opinion or order, if available): Appendix C, exhibit # 7-14

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: DELAWARE Supreme CourtDocket or case number (if you know): 453, 2005Date of the court's decision: JUNE 21, 2006Result (attach a copy of the court's opinion or order, if available): Appendix S, exhibit # 19

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND FIVE INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO RAISE THE AMENDMENT TO DEFENDANT'S INDICTMENT ISSUE.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE MEMORANDUM PAGES 16 - 84

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post - Conviction

Name and location of the court where the motion or petition was filed: DELAWARE SUPERIOR COURT

Docket or case number (if you know): 0006017660 (2002 WL 1472287)

Date of the court's decision: August 29, 2005

Result (attach a copy of the court's opinion or order, if available): Appendix C, Exhibit # 7-14

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: * DELAWARE SUPREME COURT

* (Decided JUNE 21, 2006; CA-No. 453, 2005; ALSO SEE APPENDIX D, EXHIBIT # 19).

GROUND SIX PROSECUTORIAL MISCONDUCT; INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO IDENTIFY DISCOVERY VIOLATION

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE MEMORANDUM PAGES 16-93

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-Conviction

Name and location of the court where the motion or petition was filed: DELAWARE Superior Court

Docket or case number (if you know): 0006017660 (2002 WL 1472287)

Date of the court's decision: August 29, 2005

Result (attach a copy of the court's opinion or order, if available): Appendix C, Exhibit # 7-14

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Delaware Supreme Court

Docket or case number (if you know): 453, 2005

Date of the court's decision: June 21, 2006

Result (attach a copy of the court's opinion or order, if available): Appendix D, Exhibit #19

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is "No," state which grounds have not been so presented and give your

reason(s) for not presenting them: There is an Motion for "Stay of ONE-YEAR Deadline" of Habeas Corpus Act, which is foreclosed at state Superior Court. (SEE MEMORANDUM pages 12-16); also SEE Appendix A, Exhibit #1

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: No

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. Petition for Writ of Certiorari
IN The United States Supreme Court

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: N/A

(b) At arraignment and plea: Edmund M. Hillis (Pub. Defenders, Wilm. Del.)

(c) At trial: Edmund M. Hillis (Public Defender's Office, Wilmington Del. 19801, 820 N. French St.)

(d) At sentencing: Edmund M. Hillis

(e) On appeal: (Direct) Edmund M. Hillis

(f) In any post-conviction proceeding: Pro - Se

(g) On appeal from any ruling against you in a post-conviction proceeding: Pro - Se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* SEE MEMORANDUM PAGES 1-16

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: REVERSE AND REMAND
to Delaware State Court's and determine where to proceed
from there.

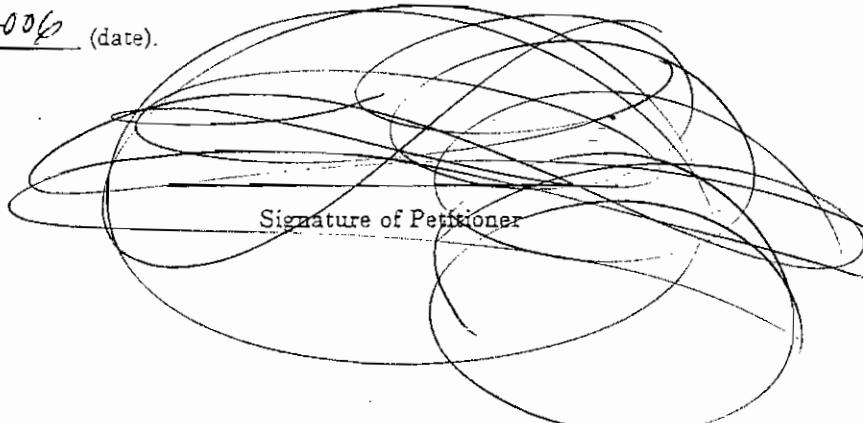
or any other relief to which petitioner may be entitled.

dko-SE

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on
August 17, 2006 (month, date, year).

Executed (signed) on August 17, 2006 (date).


Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Plaintiff

v.

Defendant(s)

ORDER

IT IS HEREBY ORDERED, this ____ day of _____, 200____ that
the attached Motion for Extension of Time has been read and considered.

IT IS ORDERED that the Motion is hereby GRANTED/DENIED.

IT IS FURTHER ORDERED THAT

Judge

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION
District Court for Delaware
[Insert appropriate court]

State of Delaware)
) SS.
County of New Castle)

Affidavit of: MAILING
Dated: August 17, 2006

AFFIDAVIT

I, SEVEAR L. BACON, being first duly sworn deposes and says that the foregoing statement is true and correct observation of what occurred on the above date herein at/in MHU 21-A-C-3 located in the Delaware Correctional Center, Smyrna, Delaware, in that I was a part of or witnessed the incident described herein. I would clearly state under penalty of perjury of the laws of the State of Delaware.

Defibroner handed "Writ of Habeas Corpus" to
D. C.C. Staff on August 17, 2006 to be Mailed.

Defiant: _____
Signature: _____
SEVEAR L. BACON
Print Name: _____
Delaware Correctional Center
1181 Paddock Rd.
Smyrna, Delaware 19977

SWORN TO AND SUBSCRIBED before me this 18 day of August, 2006

My Commission Expires:

6-17-2008

Mark J. Jones
Notary Public